



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Omni Elevator Company

**File:** B-246393

**Date:** March 6, 1992

Herlen E. Bess, Omni Elevator Company, for the protester.  
William E. Thomas, Jr., Esq., Department of Veterans  
Affairs, for the agency.  
Scott H. Riback, Esq., David Ashen, Esq., and John M.  
Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Protest by incumbent against agency's failure to solicit  
firm is denied where agency, using small purchase proce-  
dures, obtained adequate competition and record does not  
show that award was made at unreasonable price or that  
agency acted deliberately to exclude protester.

### DECISION

Omni Elevator Company protests the award of a contract to  
Karma, Ltd. under request for quotations (RFQ) No. 600-133-  
92, issued by the Department of Veterans Affairs (VA) for  
elevator inspection services. Omni argues that the agency  
improperly failed to provide it an opportunity to submit a  
quotation.

We deny the protest.

The RFQ was issued under small purchase procedures (see  
Federal Acquisition Regulation (FAR) part 13) and covered  
elevator inspection services at the VA Medical Center in  
Long Beach, California. The agency established a bidders  
list of four firms after conducting an informal market  
survey; all four were sent copies of the RFQ. Although Omni  
was the incumbent contractor for the same services, and had  
submitted a properly executed application to be included on  
the bidders mailing list (see FAR § 53.301-129), the firm  
did not receive a copy of the RFQ or submit a quotation.  
Two firms submitted quotations, and a delivery order was  
issued to Karma on the basis of its low quotation of \$7,464.  
On October 23, Omni contacted the contracting officer to  
inquire whether the agency would be soliciting the

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requirement for fiscal year 1992. After being advised of the award to Karma, Omni filed this protest with our Office.


Omni contends that the agency's failure to solicit it was improper since it was the incumbent contractor for the requirement and had submitted a bidders mailing list application to the agency. According to Omni, by failing to solicit the firm, VA failed to achieve full and open competition.

We find that VA's failure to solicit Omni does not warrant disturbing the award to Karma. Since this is a small purchase procurement it is excepted from the Competition in Contracting Act of 1984 requirement for full and open competition. 41 U.S.C. §§ 253(a)(1)(A), 253(g) (1988); J. Sledge Janitorial Serv., 70 Comp. Gen. 307 (1991), 91-1 CPD ¶ 225. An agency is to promote efficiency and economy in small purchase procurements by using simplified procedures in soliciting quotations from a reasonable number of qualified sources that will promote competition to the maximum extent practicable. Federal Acquisition Regulation (FAR) § 13.106(b)(1). Generally, a solicitation of three vendors is sufficient. J. Sledge Janitorial Serv., supra; FAR § 13.106(b)(5). It is not sufficient merely to solicit three vendors where another responsible source requests the opportunity to compete--in those circumstances, such sources should be afforded a reasonable opportunity to compete. J. Sledge Janitorial Serv., supra; Gateway Cable Co., 65 Comp. Gen. 854 (1986), 86-2 CPD ¶ 333. The determinative issue in such cases is whether the agency made a deliberate or conscious attempt to preclude the protester--in this case the incumbent--from competing, knowing the firm's interest in competing, and if it did so, whether that action was reasonable. CardioMetrix, B-241344, Jan. 31, 1991, 91-1 CPD ¶ 108; Omni Elevator, B-233450.2, Mar. 7, 1989, 89-1 CPD ¶ 248.

The contracting officer states that her failure to solicit Omni was an unintentional oversight that resulted from VA's use of a bidders list based upon an informal market survey conducted by the contracting officer, instead of the standard bidders list on which Omni was included. This method of identifying prospective offerors was proper. Agencies may use informal market surveys in lieu of formal solicitation mailing lists when conducting small purchase acquisitions. See FAR §§ 14.205-1 and 13.105(d)(4). There is no evidence that the agency deliberately excluded Omni. Further, as indicated above, the agency's solicitation of four firms (two of which responded) was sufficient to meet the agency's obligation to solicit a reasonable number of firms notwithstanding Omni's exclusion.

Omni further asserts that, by virtue of its exclusion, VA failed to afford small disadvantaged businesses (SDB) such as itself an opportunity to compete for the acquisition to the maximum extent practicable, as it asserts is required under the standard provision at FAR § 52.219-8. This provision does not apply to the solicitation issue raised by Omni here; it merely requires certain government prime contractors to establish and maintain adequate small business subcontracting plans. We note, moreover, that no regulation--other than those implementing SDB programs such as the Small Business Administration's section 8(a) program (none of these programs was involved here)--imposes on agencies an obligation to consider firms' SDB status in determining how to proceed in soliciting quotes in a small purchase procurement.

The protest is denied.

  
for James F. Hinchman  
General Counsel